IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 216 Misc.

In the Matter of the Application of

MORRIS BERMAN,

Petitioner-Appellant,

for an Order pursuant to Article 78
Civil Practice Act

—against—

BERNARD J. GILLROY, Commissioner of Housing and Buildings of the City of New York, JOSEPH M. MCNAMARA, as President of the Municipal Civil Service Commission of the City of New York, DARWIN W. TELESFORD and ESTHER BROMLEY, as Commissioners of the Municipal Civil Service Commission of the City of New York, LAZARUS JOSEPH, Comptroller of the City of New York, and SPENCER C. YOUNG, Treasurer of the City of New York,

Respondents.

APPELLANT'S REPLY BRIEF IN SUPPORT OF APPLICATION FOR A WRIT OF CERTIORARI.

Introductory Statement.

Not a Routine Civil Service Case, but one founded on Civil Rights. Under "Facts" and arguments in the brief in opposition, this case is improperly considered as a routine civil service case, and ignores fundamental constitutional issues raised. But, as stated in the letter to the Court, the petitioner was (R., p. 156):

a. kidnapped from his home and taken to a police station (no warrants obtained) on threat of death after an unconstitutional search and seizure;

b. brutally beaten in a police station for a false confession to an offense of which the petitioner hadn't the slightest knowledge; and

c. dismissed from his classified civil service position as civil engineer as a direct result of the above, after being officially cleared of the charge, both judicially (R., pp. 29, 35) and by the departmental hearings commissioner (R., p. 110).

Points Conceded by respondent. Points in the Petition which are unanswered, and may be deemed conceded, are (p. 2 of Petition):

Point VII, Unlawful search and seizure (Fourth Amendment);

Point IX, Right of counsel and witnesses denied (Sixth Amendment);

Point XII, Usurpation of power under color of law Obtaining a false confession by torture and basing a dismissal thereon (p. 6, Specif. 10);

Specifications of Errors 1, 4, 7, 8, 9 (10), 13, 14 and others (p. 5, Petition).

Material Errors. Among material errors in the brief in opposition is a statement on page 6, line 5,

> "he made no request * * * for the opportunity of being represented by counsel."

This is in error, as may be noted from the Record (p. 97, fol. 291),

> "the above enumerated rights have been previously requested, and they have been denied."

Please see Reply to Argument 1, *infra*.

Other errors. Page 2, The title of the petitioner was Civil Engineer.

Page 3. The officers of the children's society did not "arrest" the petitioner, as no warrant or corroboration was obtained, but petitioner was forced from his home under threat of death (Reply to "Facts", *infra*, referring to p. 2 of opposition brief).

The Technique of The Big Lie. The civil rights violations in this case are so shocking, that the truth or falsity of the departmental charges can in no way legalize the consequence of such violations—dismissal from public office. But one might suppose, on noting the voluminous record in this case, that there is at least some fraction of truth in the departmental charges made by the respondent. That there were very plausible political and religious grounds for making these totally false charges is indicated in the Community Council's brief as amicus curiae. The general technique employed by the respondent was described by the then President of the United States on September 17th, 1952 in an address before the National Conference on Citizenship (N. Y. Times, Sept. 18, 1952):

> "The technique of the big lie consists of two things. It consists first, of making a charge against one's op-

ponents which is frightening and horrible and so extreme that nobody could believe that a decent person would make it if it were not true. Hitler explained this very clearly. He said that if a lie is bold enough people will think there is some truth in it because it would never occur to them, in their own experience, to lie on such an exaggerated scale.

"The second part of the big lie technique is to keep repeating the lie over and over again, ignoring all proof to the contrary.

"The big lie technique is immoral and subversive. It is not a weapon which democratic society can afford to use.

"We have no place for this sort of thing in America. If we permit its use, our constitutional form of government can be destroyed * * *."

The respondent's lack of reputation for integrity has been publicly established; thus (Appendix C of Petition) he misled the press and public for weeks, after a fatal fire, with a statement that he had no power "under the charter" to enforce the building laws, whereas the New York City Administrative Code actually gives him *exclusive* power to do so; the New York press appeared considerably incensed over this deception by inference, as the last paragraph of the editorial (Appendix C) will indicate. Pages 29 and 30 of the Community Council's brief show the state of public exasperation over the respondent's tactics, and page 31 of said brief, Exhibit B, shows the experience of a high New York City official with the respondent relative to this case. Nothing will here be said for the respondent's reputation for morality, but it may be noted that while the petitioner is totally naive on the subject of departmental Charge 1, judging by lack of evidence to the contrary, the respondent dwells on moral turpitude unduly and repetitiously in the record.

The respondent adduced no outside evidence as to the facts of the case whatsoever at the departmental inquiry, but merely lewd testimony on the false confession by the agents who committed, or conspired to commit, assault and battery in obtaining the confession and subornation of perjury on their "witness". This testimony was so prejudiced, that if the agents told the truth they would now be serving long prison sentences. Speaking of a bureau under the respondent, State Supreme Court Justice O'Brien, said (p. 29, Community Council's brief):

> "The public welfare is concerned, and there is room for reasonable dispute that it is being adequately served * * *."

The New York Times said editorially (p. 30 of said brief):

> "The main thing is to get a new boss with enthusiasm for the job to be done and give him a free hand to do that job."

McCarthyism* in the Supreme Court. Public slurs or exaggerations in absence of verified facts are not foreign to this Court, whose independence of action has been threatened on more than one occasion; in the instant case the respondent employs that technique as may be noted in quotes on page 4 of the brief in opposition.

Since there is absolutely no valid evidence implicating the petitioner in any way, respondent's counsel now desires to impress this Court with slurs never part of the departmental charges, which could at least have been formally defended.

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* term used in its ordinary meaning; no personal reference is intended, since the practice is engaged in by a plurality of persons.

For example, the false inference was made by the respondent, and here repeated by his counsel, that petitioner stated he had never heard of *a lake* in Central Park, whereas the record (p. 69, last paragraph) merely shows the petitioner never heard of *Castle Lake.* Neither have most New Yorkers ever heard of Castle Lake, including petitioner's attorney who lived opposite Central Park (Appellant's Brief, p. 23, paragraph 2). In that same quote (p. 4, brief in opposition), an attempt is made to find vilification:

a. in a straightforward, publicly-made invitation asking a girl to go to a park, accompanied by another;

b. in leaving a mailing address (with an admonition, incidentally, never to visit in person);

c. in using a pseudonym for an activity (music) totally unrelated to one's chief career (see Community Council's brief, p. 21, paragraph j) coupled, for good faith, with a correct address (which address was later used for purposes of kidnapping and subsequent torture).

Irregularities in the Department. According to numerous newspaper reports and indictments obtained, the Department of Housing and Buildings of the City of New York, from which the petitioner was dismissed, was, during the O'Dwyer administration, when this dismissal took place, one of the world's most lucrative agencies of bribery and corruption, and the chief reason for the petitioner's dismissal was his unwillingness to join the conspiracy against the public interest. The U. S. Senate Crime Investigating Committee's report on the City of New York, and the conviction of Commissioner Moran as head of a bribery ring in another department will give a clue to the general ethics in vogue. The petitioner, because of his high principles of public office, has most always been *persona non grata* with employees of the department whose interests have been less public.

Communism in New York City Government. Former U. S. Representative Vito Marcantonio of New York was recognized as the pro-Communist patronage dispenser for the American Labor Party during the administration of Mayor O'Dwyer, whose election was aided by that party, and who appointed, as a chief assistant, a member of that party (probably on the Attorney-General's subversive organization's list) whom he later dismissed, calling him a communist. Many members of that party were placed in key positions in New York, which they still hold. The petitioner was the only public opponent to communist infiltration into New York City government, to his knowledge (Community Council's brief, p. 30[b]), and, while that party works secretly, it works very decisively, and may have lent its active support in the dismissal of the petitioner, to set an example for others, as a deterrent to future opposition.

Reply to "Facts".

(Pages 2 to 5 of brief in opposition).

Since the serious civil rights violations in this case are here completely ignored, attempting to present a routine civil service issue, little that is useful to the Court for constitutional purposes has been presented. Some material errors under the heading of "Facts" are:

> Page 2, last paragraph, "because of his *arrest* by agents of the Society * * *."

Reply. The Society's agents, having no warrants, did *not* make any arrest, but kidnapped the petitioner from his home under threat of death (R., p. 156). They could not possibly obtain such a warrant or writ, since the offense alleged requires corrobation, which was obtained by a police station "confession" they obtained by torture for such "corroboration".

> Page 3, 1st paragraph on page, "twenty-eight instances of unexplained lateness."

Reply. Such unwarranted repetition of 1-minute "latenesses" in the record, when the time clock was frequently 6 minutes late should not be made without explanation, as same would tend to mislead the court. Anyone familiar with government personnel procedure would know such a charge is one deliberately made when dismissal is planned as a certainty, regardless of any impartial determination of facts.

> Page 3, 2nd line and 4th paragraph, "beyond a reasonable doubt."

Reply. Since there was not even an accusation for the district attorney and deputy commissioner to consider at the time, the term "beyond a reasonable doubt" was superfluous. Guilt by accusation is not due process; nor is placing a citizen under a cloud of doubt by a withdrawn accusation. In view of the denial by the respondent of rights of counsel, witnesses and cross-examination to the petitioner and latter's inability to establish all of the facts, respondent is estopped, in law and equity, from raising any doubts as to legally established innocence, by such terms as "beyond a reasonable doubt." On that basis no citizen of the United States is innocent beyond a reasonable doubt.

Civil Service Legislation. The Petitioner is the Chairman of the Conference on Civil Service Legislation (comprising the leading public and employee organizations in the field, and convening approximately annually since 1939), and wrote the original draft of paragraph 3 of Section 22 of the New York Civil Service Law (Appeals to the Civil Service Commission, Appendix A of Petition). He has noted a reference in *Bailey* v. *Richardson* (341 U. S. 918 [1950]), to the effect that even the original proponents of civil service extension did not call for counsel and witness privileges for

the accused in civil service cases. The petitioner wishes to note that in that case (quoting from 182 Fed. 2d, 46):

> "all witnesses presented by her testified,"

and

> "she was represented at all stages by competent counsel."

As Chairman of the Conference, the petitioner wishes to state that most civil service groups in the field favor employee representation by counsel and witnesses, and feel that such rights are inherent within the Constitution itself. Many state civil service laws already grant such rights to *all* employees, and even many departments of the City of New York voluntarily grant such rights to employees; others, such as teachers, policemen, firemen, and transit workers, have these rights by special legislation. *Of course, when the head of an agency wishes to conceal corruption in his agency he will not risk airing the facts in public, and will prohibit both counsel and witnesses to the accused.* The public service should not be compared with private industry in this regard—in the latter, the profit motive compels the dismissal of disloyal employees; in the former, the agency head, who holds office for a limited period at the pleasure of a political party frequently is placed in his position to mulct the government and public to the fullest during his brief tenure of office, and will brook no interference of loyal employees who may oppose corruption and subversion in government; these will of course, be dismissed summarily while going through the motions of a "hearing", will not be permitted either counsel or witnesses, nor the privilege of questioning opposing witnesses—that would upset the crime syndicate control of government and the spoils system. Guarantee of job tenure now provided by civil service regulations are not necessarily to be equated with good government.

Reply to Arguments.

Respondent's Argument 1.

a. Page 6, Line 5.

> "he made no request at any time during the hearing for the opportunity of being represented by counsel."

Reply: The Court is respectfully requested to note petitioner's answer to charges, page 97, folio 291 of the Record submitted at the departmental inquiry:

> "The above enumerated rights have been previously requested, and they have been denied; there is no precedent for such a denial * * *."

The above-stated denial of counsel and witnesses refers to paragraph 10 of petitioner's answer on said page 97, which states in part:

> "There is no precedent for such a charge ever to have been heard except under the guarantee of Article VI of the United States Constitution, which states, in part,
>
> 'the accused shall enjoy the right * * * to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense'."

b. Page 6; Line 10.

> "Petitioner's counsel did not urge any constitutional questions in either court. The questions were not raised in the proceeding until a brief was submitted amicus curiae."

Reply: The Court is respectfully requested to note that

1. the question of Amendment VI of the U. S. Constitution was before *all* of the state courts, as it was raised by the petitioner in answer to departmental charges, and was at all times part of the Record (p. 97, fol. 291) and quoted in reply to paragraph (a) *supra*.

2. counsel for petitioner presented all of the U. S. Constitutional questions to the state Court of Appeals by specifically making the Community Council's brief a part of his own. (Page 3 of brief to the Court of Appeals.)

3. the United States Supreme Court has considered lack of aid of counsel in the raising of technical questions; in the present instance, please note the affidavit (Appendix A), to indicate that his first counsel had recognized and written the constitutional issues involved, though these had not been included by the brief writer, and second, that the counsel clearly acted contrary to petitioner's interest in some aspects of the case, and were discharged. As stated in the affidavit,

> "* * * I felt that I was not only without adequate legal representation, but that my attorneys were, in part, representing the claims of my adversaries, untrue as they were * * *."

In the cases quoted in Argument 1 (*Denver Stockyard Co. v. United States, etc.*), *new issues or legal remedies* were first presented in the United States Supreme Court, whereas in the instant case, no new facts, arguments or constitutional principles are presented, these having been presented in the state courts.

Respondent's Argument 2.

a. "The unanimous judicial authority is that public office or employment is not *property* within constitutional provisions guaranteeing its enjoyment."

Reply. The question of *property* is here purely academic, since both the Fifth and Fourteenth amendments to the U. S. Constitution are not limited to *property* in their application, but also concern *life* and *liberty;* the Petitioner was in this case actually deprived of his *liberty* without due process of the law and his *life* was actually threatened (R., following p. 156 and p. 33, fols. 98 to 102).

None of the cases cited under Respondent's Argument 2 concerns deprivation of liberty or threat to life. But even in *Taylor and Marshall* v. *Beckham* (178 U. S. 548, 571), a public service case, Mr. Chief Justice Fuller indicated that in unusual cases "the interference of this court can properly be invoked." The instant case is rare indeed, for no precedent has been cited for removal of a public officer via kidnapping, torture and related techniques abhorrent to the Constitution of the United States.

b. "Under the New York State Constitution the rights of incumbents of offices and employments, other than incumbents of constitutional offices are statutory only. New York State Constitution, Article 13, § 6 * * *."

Reply. Section 22 of the New York State Civil Service Law, which should be presumed to be within the New York Constitution is quoted in Appendix A of the brief and is explicit as to lack of power to remove "except for incompetency or misconduct". As to superficial and motivated charges in New York courts, the opinion in case of *Rox* v. *Doherty,* 1940, 260 App. Div. 260, affirmed by the New York Court of Appeals in 284 N. Y., states:

> "There must be substance to the charges and * * * the explanation must be passed upon fairly and in good faith and not arbitrarily or from some ulterior motives."

(As cited on p. 3 of the brief as *amicus curiae* filed in this case before the State Court of Appeals by the American Federation of Labor [American Federation of State, County and Municipal Employes]).

Respondent's Argument 3 (p. 7).

> 'The provisions of subdivision 2 of § 22 of the Civil Service Law according to non-veterans 'an opportunity to explain charges' * * * does not abridge petitioner's privileges as a citizen simply because subdivision 1 of that section grants the right to a hearing upon charges made against a veteran."

Reply. No pertinent federal cases are cited in support of this contention. *Substantial* and *material* rights should here be distinguished from *civil rights* which latter may *not* be granted to one class and denied to another, though the legislature is within its power to grant special privileges as to the former; but these special privileges may not extend to *basic rights of citizenship, such as rights of counsel and calling of witnesses.* Thus, a law (such as Section 22 of the New York Civil Service Law) is inherently unconstitutional when it grants citizenship rights to one class and denies it to another, just as would be a law granting whites the right to a public education, while denying it to negroes. Section 22 of the New York Civil Service Law (Appendix A) is unconstitutional, as it does not grant equal protection of the law, as required by Amendment XIV, Section 1 of the United States Constitution; it creates "second class citizens".

Respondent's Argument 4 (p. 7).

> "Petitioner's rights under the due process clause of the Fifth Amendment to the Constitution of the United States were not infringed by reason of the fact that a criminal complaint was made against him * * * *Bailey* v. *Richardson*, * * *."

Reply. In none of the cases cited were there a *deprivation of liberty,* nor *threat of life.* In *Bailey* v. *Richardson,* the petitioner was allowed *counsel* and *witnesses,* not permitted petitioner in the instant case. The same is generally true of the other cases cited. (*Angilly* v. *United States* relies upon *Bailey* v. *Richardson,* affirmed 341 U. S. 918, by a divided court.)

Respondent's Argument 5.

> "The removal of a state or municipal employee from public employment does not present a federal question." *Preston* v. *Chicago. Walton* v. *House of Representatives.*

Reply. On the contrary, the Court held, in *Walton* v. *House of Representatives, State of Oklahoma,* 265 U. S. 487, that a federal court in equity has jurisdiction in such cases where the plaintiff's constitutional rights are invaded, and in *Preston* v. *Chicago,* 226 U. S. 447, the Court merely ruled that whether or not Preston was in the classified civil service of the city was not a federal question. In the *Walton* case, the Court held that it will

> "lend its aid against a wrongful interference or removal under a void judgment which involves complainant's federal constitutional rights."

As already pointed out, the instant case is essentially a civil rights rather than a civil service case.

CONCLUSIONS.

1. **The application for a writ of certiorari should be granted.**

2. The records in this case should be directed to be sealed, at least as to names of principals. (Specifications of Errors, Number 4.)

3. The state courts should be directed to establish the facts fully, under due process rights to the petitioner granted by the Fifth and Sixth Amendments, and refer back to this Court, if the Court deems essential.

4. Section 22 of the Civil Service Law of the State of New York should be held invalid under the United States Constitution, Amendment XIV, Section 1.

December 28, 1953.

MORRIS BERMAN,
393 Central Part West,
New York 25, N. Y.,
Appearing In Persona.

APPENDIX A.

IN THE

UNITED STATES SUPREME COURT

BERMAN v. GILLROY, ET AL.

OCTOBER 1953 TERM.

No. 216 Miscel.

Affidavit Relating to Legal Representation and Raising of Constitutional Questions.

STATE, CITY AND COUNTY OF NEW YORK)SS.:

MORRIS BERMAN, Petitioner in the above entitled cause, being duly sworn, deposes and says:

HAROLD BAER, of Baer and Gallin, New York, my first attorneys in the above mentioned cause in the state courts, prepared a brief or briefs bringing up U. S. constitutional questions in connection with this cause, and led me to believe these would be presented to the state courts, but I did not learn until within the past few months that said attorneys had not presented such questions; the explanation Mr. Baer gave me was that a Mr. Goldsmith, with whom I had no contractual relations to my present knowledge or belief, had not included such questions in the brief, in spite of the definite understanding with Mr. Baer as above referred to. Said Mr. Goldsmith and Mr. Baer both refused to interview me before the Appellate Division oral argument, and Mr. Goldsmith, who came to court unprepared, made a shockingly untrue and derogatory oral admission against my interest before the Appellate Division of the State Supreme Court, by admitting the validity of Charge 2 of the departmental

charges (pertaining to alleged latenesses) whereas my attendance record was one of the best in the Engineering section of the Borough of Manhattan, City of New York, where I was employed, said "latenesses" being generally of one minute duration while the departmental time clock was frequently one to six minutes fast. It is apparent that said charge was added as an excuse for dismissal, Charge 1 having been officially disproven.

WILLIAM KUNSTLER, of New York, attorney in the above cause in the Court of Appeals of the state, explained to me that he was bringing up various U. S. Constitutional questions by making the brief as amicus curiae of the Community Councils a part of his own brief (p. 3 of his brief), though I asked him to incorporate such constitutional questions in his own brief at my expense for printing, which he failed to do. After he failed to reply to any of the alleged factual statements made by the respondents, I obtained both his provisional permission and the permission of the Court of Appeals of the state to submit a letter to the court, stating at the outset, "This statement supplements, but does not modify the statements in briefs filed for the appellant by his counsel". Mr. Kunstler then sent a letter to the court against my interest (Appendix E of Petition).

In view of these actions against my interest and the fact that my counsel, in both instances, refused a requested interview to me before court argument (State Supreme Court, Appellate Division and Court of Appeals) though a brief initial explanation was allowed me, I felt that I was not only without adequate legal representation, but that my attorneys were, in part, representing the claims of my adversaries, untrue as they were, and said attorneys were discharged. On the other hand, SAMUEL DOUGLAS, Esq.,

my attorney in two related cases (libel and slander against the same respondents and a society), was, and still is, my attorney in said cases, and has secured favorable court decisions on complaint validity. (N. Y. Law Journal, Feb. 2, 1951, p. 419.)

MORRIS BERMAN.

Signed and sworn to before me this
19th day of December, 1953.

STANLEY SIMON

Notary Public, State of New York
No. 03-9014385
Qualified in Bronx County
Certs. filed in Bs., N. Y., Kings & Queens
County Clerk's & Register's Offices
Commission Expires March 30, 1954

MORRIS BERMAN, P.E., LL.B.
393 CENTRAL PARK WEST
NEW YORK 25, N. Y.

CHAIRMAN, CONFERENCE ON
CIVIL SERVICE LEGISLATION
PRES., N. Y. SOC. OF ENGINEERS
PROV. CHMN., FIRST WHITE HOUSE
RESTORATION COMMITTEE
ALUMNI REPRESENTATIVE, CLASS
OF 1929, NEW YORK LAW SCHOOL
ACTIVE MEMBER, CITIZENS UNION
OF THE CITY OF NEW YORK

Letter to the Court Relating to Reply to Brief in Opposition, Miscellaneous Docket 216, United States Supreme Court, October Term, 1953.

(*Berman* v. *Gillroy, et al.*)

THE SUPREME COURT OF THE UNITED STATES

YOUR HONORS:

The objective of this Letter to the Court is to call your attention to an unusual opportunity the Court now has, through judicial interpretation, to forever outlaw forced confessions obtained by torture in the United States of the type we condemn so readily in totalitarian countries, and well illustrated by the instant case, unusual in that the torture was witnessed by disinterested witnesses, while ordinarily the indirect evidence of a medical report of mayhem committed is necessary to establish such torture.

BRUCE SMITH, of the Institute of Public Administration, a leading authority on police systems, states, in his "Police Systems in the United States", page 10,

> "The methods employed by police in extorting confessions * * * have been repeatedly, and for the most part reliably, described by a number of observers, even to the most revolting detail."

In the present case (above noted) the petitioner was (R., p. 156):

a. kidnapped from his home by agents of a private organization and taken to police station (no writs obtained) on threat of death after an unlawful and fruitless search, and seizure.
b. brutally beaten in said police station for a false confession to an offense of which the petitioner hadn't the slightest knowledge.
c. dismissed from his classified civil service position as civil engineer as a direct result of the above, *after* being officially cleared of the charge, both judicially and by the departmental hearings commissioner. (R., pp. 29, 35, 110.)

The petitioner was not only innocent of the offense to which he was supposed to confess, but he was never even actually accused of such offense, the "accuser", having been under duress, and having been forced to make the "accusation" under threat of a prison sentence if he did not comply (R., p. 34, fol. 100). The complainant and his brother testified as to their falsity of accusation against interest, being confined under the auspices of the same private organization above referred to under (a) (R., p. 33, fols. 99 to 102). A comparison of an intentionally scribbled signature so as to show duress (R., p. 104) with petitioner's actual signature (following p. 102 [E]) will indicate prima facie evidence of duress. Petitioner believes that if he had not signed that spurious document he would have been murdered by prolonged beating—a not uncommon practice in New York police station houses, where the police, acting in conspiracy, assign stock reasons for the "deaths" for the record.

As Dr. GEORGE H. HALLETT, JR., (biography in "Who's Who in America") a noted authority on municipal government has stated in the Record (opp. p. 148),

> "it is inconceivable to me that he (Petitioner) should have been guilty of, or voluntarily confessed to, the offense for which he was removed from the Department of Housing and Buildings."

Other leaders of good government movements in New York expressed themselves similarly for the record (R., pp. 132 to 146). They addressed themselves to former Mayor William O'Dwyer, who, at least according to the U. S. Senate Crime Investigating Committee report, would hardly be expected to be greatly moved thereby. The American Federation of Labor (affiliate) and the Community Councils of the City of New York, Inc., submitted briefs as amicus curiae.

Please note Appendix E to the petition, paragraph B, "Construction of Confessions", which appealed to the state court to bar confessions by judicial interpretation:

> *"Under well-known conditions of police brutality a confession may be presumed to have been obtained under duress unless the signing thereof is adequately witnessed, such as in open court and (witnessed) by the sitting magistrate, counsel for the accused and the district attorney for assistant district attorney."*

In the instant case none of the above parties witnessed the signature.

The Supreme Court of the United States is appealed to to uphold this principle, formulated after painful personal experience by a civic worker who has devoted his life to the public welfare. The precaution offered would in no way affect the present effectiveness of bona fide confessions—it would merely end brutality in the securing of such confessions—now secured in back rooms of police stations under conditions of inquisition and the torture chamber the uninformed believe to be connected with medieval history exclu-

sively. Such brutality has well become a blot upon the entire American system of justice in the eyes of the world. Your Honorable Court stands as a guardian of such justice in the last resort.

No American, regardless of his station in society, is immune from such torture for a false confession and consequent loss of position, reputation, liberty and possibly life. I therefore respectfully appeal to you, as a Justice sworn to uphold the Bill of Rights, protect your own family and country from a repetition of such torture, and construe all confessions as void unless the signatures thereto are adequately witnessed as above formulated. No self-respecting prosecutor will object to such a precaution, which should well prove to be the most significant legal contribution of our generation, and will undoubtedly be adopted as a model by other democratic nations of the world.

One can hardly realize the horror of unprovoked loss of liberty, reputation and threatened loss of life, even apart from the attendant physical torture, unless personally experienced; it is then that the Constitution of the United States stands out as a hope; it is then that it fades in import into a somewhat meaningless document unless loyally enforced by both the executive and judicial branches of government.

It is highly unlikely that police-influenced legislatures would initiate the legal construction of confessions here urged and prayed for, any more than some legislatures could be depended upon to initiate civil rights legislation of the type to which they are traditionally unadjusted; only a loyal interpretation of the Constitution of the United States can effectuate such a construction, which will eliminate the sadism and savagery upon which American jurisprudence now draws in its deliberations and decisions.

Respectfully submitted,

MORRIS BERMAN,
Petitioner.

December 24th, 1953.